

**SECTION 1602 EXCHANGE FUND AGREEMENT BY AND BETWEEN
ARKANSAS DEVELOPMENT FINANCE AUTHORITY AND
LIMITED PARTNERSHIP**

This Agreement (the "Agreement") is entered into this _____ day of November, 2009, and made by and between the Arkansas Development Finance Authority (hereafter designated as "ADFA") and _____ Limited Partnership (hereafter designated as "Owner").

WHEREAS, Owner received an award of federal low-income housing tax credits ("tax credits") on or about _____, 200__ for the [acquisition and rehabilitation], [rehabilitation], [construction] of a qualified low-income housing project known as "_____" located in _____ County, Arkansas ("the Development"). The Development will consist of a total of _____ (____) housing units, of which _____ (____) will be income-restricted and rent-restricted pursuant to Section 42 of the Internal Revenue Code (the "IRC").

WHEREAS, [Owner is retaining \$_____ of 200__ federal low income housing tax credits.] [Owner has returned \$_____ of its 200__ tax credits allocated by ADFA in exchange for an allocation of \$_____ 2009 federal low income housing tax credits.] Owner made such return of federal low-income housing tax credits to ADFA on _____, 2009 due to an inability to obtain an equity investor for the tax credits.

WHEREAS, Owner applied on _____, 2009, for a Section 1602 Exchange Fund grant as defined herein as a financing source for the Development. ADFA Board of Directors awarded Owner _____ Dollars (\$_____) as a Section 1602 Exchange Fund grant ("Section 1602 Exchange Funds") to [acquire and rehabilitate][construct] [rehabilitate] _____ (____) multi-family units for rent, subject to all restrictions set forth by 26 U.S.C. Section 42 and accompanying legislation, including but not limited to all applicable regulations, revenue rulings, revenue procedures, other guidance issued by the United States Treasury ("Treasury") and the Internal Revenue Service ("IRS"), and all further restrictions agreed to by Owner.

WHEREAS, the term "Section 42 of the IRC throughout this Agreement **shall** mean 26 U.S.C. Section 42, all amendments thereto, all regulations promulgated thereunder, all accompanying legislation, and all guidance issued by the IRS, the United States Department of Treasury, and the United States Department of Housing and Urban Development ("HUD").

NOW THEREFORE, ADFA and Owner hereby execute this Agreement to undertake the described affordable housing Development.

FURTHERMORE, ADFA and Owner agree as follows:

I. THE DEVELOPMENT

A. Owner is the owner of certain real property, more particularly described in **Exhibit A** located in the City of _____, _____ County, Arkansas, and **shall** complete the [construction] [rehabilitation] of _____ (____) housing units on the real property of the Development. _____ (____) of the _____ (____) units will be tax credit-qualified units and will accordingly be reserved for low-income tenants that are income eligible and otherwise eligible under Section 42 of the IRC.

B. Owner **shall** construct the Development to the standards required in Section II of this Agreement and in conformance with all representations made by Owner and Owner's architect. The Development **shall** constitute a qualified low-income housing Development as defined in Section 42(g) of the IRC and regulations promulgated thereunder. The housing units of the Development will be rented or available for rental on a continuous basis to members of the general public throughout the term of this Agreement.

C. Owner certifies that the Development was not placed in service prior to 2009, except for any placement-in-service arising from the acquisition of a building or buildings to be rehabilitated as part of the Development.

D. Owner elects the following minimum set-aside election:

_____ 40% of the total housing units (exclusive of the designated number of manager/employee units) will be reserved for households that have an annual gross income equal to or less than 60% of the area median income for the area, as determined by HUD, adjusted for family size and otherwise eligible under Section 42 of the IRC.

OR

_____ 20% of the total housing units (exclusive of the designated number of manager/employee units) will be reserved for households that have an annual gross income equal to or less than 50% of the area median income for the area, as determined by HUD, adjusted for family size and otherwise eligible under Section 42 of the IRC.

Including the requisite number of units to meet the minimum set-aside elected above, Owner commits to reserve the following number of units in the Development for the indicated income level:

	30% AMI	50% AMI	60% AMI	Unrestricted (Market rate)	Manager/ Employee Units	Total Units
Number of Units						

E. Owner **shall** establish, for the restricted units identified above, rent limits that do not exceed the maximum rents permitted under Section 42 of the IRC the area median income elected in Section D, above.

F. Owner **shall** establish initial rents and the procedures for future rent increases based on rules and regulations established in Section 42 of the IRC.

G. The applicable fraction, as defined in Section 42(c)(1)(B) of the IRC, for the building(s) in the Development is _____ %.

The Section 1602 Exchange Percentage, as defined in Section II.B. *infra*, is _____ %.

H. Owner **shall** provide a detailed schedule, acceptable to ADFA, of construction activities to be completed under this Agreement.

I. Owner **shall** expend 100% of the total amount of Section 1602 Exchange Funds awarded for eligible costs by November 15, 2010. In the event that Owner does not expend 100% of the total amount of Section 1602 Exchange Funds awarded for eligible costs by November 15, 2010, Owner forfeits any and all claim to the remaining, undisbursed amount of the Section 1602 Exchange Funding awarded to Owner pursuant to this Agreement and Owner agrees to repay ADFA the total of all Section 1602 Exchange Funds previously disbursed to Owner unless ADFA extends such expenditure deadline, in writing. ADFA retains the discretion to de-obligate any portion of and/or all Section 1602 Exchange Funds awarded to a Development if the Owner has not expended or incurred, for eligible costs, 50% of the total Section 1602 Exchange Fund awarded within 180 days of the date ADFA issues the "Notice to Proceed" to Owner.

J. The Section 1602 Exchange Funds amount **shall** not exceed 85% of the amount of the Development's eligible basis as determined at the end of the first year of the credit period, which may, but does not necessarily, include an amount attributable to the 30% "basis boost" as such term is generally used in the context of the federal low-income housing tax credit program and Section 42 of the IRC. Owner must maintain sufficient documentation to demonstrate that the allowable construction, acquisition and rehabilitation costs of a qualified low-income building exceeds the total amount of Section 1602 Exchange Funds and Tax Credit Assistance Program ("TCAP") funds awarded and disbursed to Owner for Development. In the event that the eligible basis as of the end of the first year of the credit period is insufficient to support the amount of Section 1602 Exchange Funds disbursed in compliance with this provision, Owner **shall** repay any and all amount disbursed to Owner that exceeds 85% of such eligible basis.

K. (i) Owner **shall** request reimbursement for Development costs to the same extent as allowed under Section 42 of the IRC. Owner **shall** provide with each request for reimbursement to ADFA original receipts, invoices and evidence of payment for all costs expended for which reimbursement is sought. Owner **shall** not request reimbursement, i.e., make a "Draw Request" of Section 1602 Exchange Funds, until both the pre-construction conference has occurred and ADFA has issued to Owner a "Notice to Proceed."

(ii) With each Draw Request, Owner **shall** provide to ADFA: (1) original receipts and invoices for all eligible costs incurred or expended for which reimbursement is sought; (2) a cost certification of eligible costs, prepared by Owner, its Certified Public Accountant or attorney; (3) written statement of inspection by Owner's construction lender or, if Owner has no construction lender, the most recent inspection report prepared by an authorized representative of ADFA or third party construction monitor; and (4) a "Jobs Reporting" form. ADFA will provide the "Draw Request" and "Jobs Reporting" forms that are to be completed and submitted by Owner.

(iii) Payment by ADFA of Section 1602 Exchange Funds does not in any way constitute a finding by ADFA that the submitted costs constitute "eligible basis" nor does such disbursement constitute a waiver of ADFA's right to seek repayment of the disbursed amount, in whole or in part, in the event that the costs, or any part of the costs, are at any time deemed to not constitute eligible basis or otherwise ineligible under the Section 1602 Exchange Program.

L. Owner must place the Development in service by the time required based upon the year of allocation of tax credits allocated to Owner; thus, Owner must place the Development in service by December 31, 20____(09, 10, 11).

M. Owner must comply with the 2009 Qualified Allocation Plan, including but not limited to all minimum design standards adopted by ADFA.

N. No part of the developer fee may be paid, from any source of funds, except to the extent set forth herein. Owner may request as a part of its regular draw request, disbursement of funds for payment of, or reimbursement of a portion of the developer fee. Such request must be equal to or less than the amount of non-deferred developer fee that is the same proportion that the current draw request amount, not including the developer fee, is to the total TCAP and Section 1602 Exchange Funds amount awarded to Owner for Development.

O. Owner covenants that Owner and the Development will comply with all provisions of Section 42 of the IRC. Owner covenants that it will not take or permit any action that would result in a violation of the requirements of Section 42 of the IRC, and the American Recovery and Reinvestment Act ("ARRA"), the American Recovery and Reinvestment Tax Act ("ARRTA"), guidance and regulations issued thereunder or otherwise associated, and the provisions of this Agreement. Further, Owner covenants to take any required action, including amendment of this Agreement, as may be necessary, in the opinion of ADFA, to comply with Section 42 of the IRC, the IRS or the Treasury. In the event that ADFA determines that the Development is not in compliance with the rent and occupancy requirements of Section 42 of the IRC, and the Owner, upon written notification by ADFA, does not take immediate steps to correct such non-compliance, ADFA is entitled to take such actions as it deems necessary to enforce the provisions of Section 42 of the IRC, the ARRA, the ARRTA, all related regulations and guidance, and this Agreement, as more particularly set forth in, but not limited to, Sections V, X and XI.

II. PROJECT FUNDING

A. ADFA hereby approves the award of Section 1602 Exchange Funds in the amount of _____ **Dollars (\$_____)** to the Owner for the purpose of [construction, acquisition, rehabilitation] of the Development. Owner's current contact information is set forth in Section VII, *infra*.

B. Owner has represented in its application for TCAP and Section 1602 Exchange Funds that the Development will have an eligible basis of \$_____. The amount of Section 1602 Exchange Funds awarded herein comprises _____ % of the eligible basis (the "Section 1602 Percentage"). The Development **shall** have eligible basis at the end of the first credit year in such amount that the total Section 1602 Exchange Funds amount awarded herein does not constitute more than 80% of the eligible basis amount.

C. Owner **shall** provide a detailed budget, acceptable to ADFA, indicating usage of all funds in the Development budget, including but not limited to the Section 1602 Exchange Funds awarded under this Agreement. Attached hereto as **Exhibit B** is Development's Final Sources and Uses Statement, which includes the total project Development costs, total amount of Section 1602 Exchange Funds, total federal low-income housing tax credit equity, and all other sources of funds. Attached hereto as **Exhibit C** is the Construction Timeline. Time is of the essence for this Agreement.

D. Owner **shall** ensure that Section 1602 Exchange Funds provided under this Agreement will be requested for disbursement only in required amounts and as needed for payment of Development costs which may include non-deferred development fee in the amount provided under Section I.N. The amount requested cannot exceed the actual costs incurred, meaning, they cannot be placed in escrow accounts or advanced prior to the Owner actually incurring or expending the amount requested. Funds will be disbursed by ADFA for only Development costs actually incurred by Owner, and will not exceed actual cash requirements. ADFA reserves the right to liquidate funds available under this Agreement for eligible costs incurred by ADFA on behalf of Owner.

E. (i) Owner **shall** not utilize disbursed Section 1602 Exchange Funds for reimbursement of any costs other than those costs specified in the draw request.

(ii) Owner **shall** make its accounting records, including but not limited to all computerized accounting systems, invoices, and reports, available for review by ADFA and ADFA's agent(s) at any time. Owner shall provide audited financial statements.

F. Owner **shall** complete the Development, including all acquisition, rehabilitation and new construction, and place the Development in service as defined by Section 42 of the IRC by December 31, 2011. If any federal low-income housing tax credits were allocated to the Development in any year other than 2009, Owner certifies that it will comply with all placed-in-service requirements under Section 42 of the IRC for the appropriate allocation year. In the event that the Development is not placed in service by the earlier of the time required under Section 42 of the IRC, or December 31, 2011, Owner **shall** forfeit all claim to Section 1602 Exchange Funds awarded to Owner pursuant to this Agreement and **shall** repay to ADFA all Section 1602 Exchange Funds disbursed to Owner pursuant to this Agreement.

G. Section 1602 Exchange Funds provided under this Agreement will be in the form of a grant; however, the Section 1602 Exchange Funds will be secured by a Mortgage, and a Promissory Note payable only in the event of recapture, a Land Use Restriction Agreement ("LURA"), and a Guaranty or Guaranties.

H. As consideration for the Section 1602 Exchange Funds granted herein, Owner warrants that the Development will be acquired and rehabilitated or newly constructed in accordance with all representations made by Owner, with all applicable federal laws, regulations and agency guidance, with all ADFA requirements, with all State of Arkansas laws, regulations and agency guidance. Owner acknowledges that in exchange for the Section 1602 Exchange Funds granted herein, ADFA **shall** have a mortgage on the Development and that the General Partner of Owner **shall** execute a Guaranty in favor of ADFA for the full amount of the Section 1602 Exchange Funds. All members or partners of the General Partner of Owner, or other person(s) or entity(ies) whom ADFA finds acceptable, **shall** execute a Guaranty in favor of ADFA for its share of the full amount of the Section 1602 Exchange Funds in proportion to their ownership interest in the General Partner (collectively, "Guarantors"). Owner acknowledges that ADFA has full recourse against the Development and Owner in the event that any recapture event occurs, as set forth by guidance issued by the Treasury.

I. Owner **shall** not dispose, or permit the disposition, of any portion of a building to which this Agreement applies to any person unless all of the building is disposed of to such person. The entire amount of Section 1602 Exchange Funds granted herein must be repaid to ADFA upon sale of the Development or any building thereof during the applicable affordability period, unless the subsequent purchasers of the Development are approved by ADFA prior to such sale and provided that the subsequent purchaser agrees to: 1) enter into an agreement with ADFA to own and operate the Development as affordable rental housing for the remaining term of the affordability period; and 2) abide by all applicable Section 42 requirements.

J. If for any reason, Owner breaches any term of this Agreement, ADFA is entitled to require full repayment of any amounts advanced under this Agreement pursuant to Section X, Remedies on Default, and pursue any and all other remedies available to it under this Agreement, LURA, Mortgage, Promissory Note, federal law, state law, and any and all other agreements between Owner and ADFA.

K. ADFA acknowledges and agrees the Mortgage **shall** be subordinate to the mortgage executed by Owner in favor of a private lender to secure a note in the amount of private financing for the Development.

III. AFFORDABILITY

A. All housing developed with funding provided under this Agreement **shall** remain affordable and available to low-income persons as defined within this Agreement and in compliance with all income, rent, and other applicable restrictions for a period of _____ (_____) years (the “affordability period”). The affordability period begins on the day of project completion. Project completion is defined as the date that the last building of the Development is placed in service as defined under Section 42 of the IRC.

B. If the Development does not meet the applicable affordability requirements for the 15-year compliance period, beginning on the date of project completion, for any reason whatsoever, Owner **shall** repay to ADFA the total amount of Section 1602 Exchange Funds due under the associated promissory note to ADFA. If the Development does not meet the applicable affordability requirements at any time after the 15-year compliance period ends, ADFA is entitled to seek injunctive relief to enforce the provisions of this Agreement and any and all other remedies to which it is entitled under this Agreement, associated agreements and documents, federal law and state law.

C. Owner **shall** ensure that the affordability requirements are met for the full affordability period through deed restrictions and all other necessary documentation and mechanisms. At a minimum, affordability requirements **shall** be enforced by ADFA via a LURA encumbering the Development for the full affordability period. Owner **shall** cause, within 30 days of the date of this Agreement, a LURA approved and executed by ADFA and Owner, to be filed in the real property records of the County in which the Development herein is located. Such LURA must be binding on all owners, and successors and be enforceable by ADFA, HUD and residents of the Development.

IV. ASSET MANAGEMENT

A. All asset management duties will be performed by a third-party asset management company (hereinafter “Asset Manager”), which will report to ADFA.

B. Owner agrees to cooperate fully with the Asset Manager and ADFA in providing all requested information, developing and maintaining policies required by the Asset Manager and ADFA and all other activities and responsibilities to ensure that the Asset Manager and ADFA have full and complete access to all financial records of the Owner, the Development and all related persons and entities. Owner agrees that it will implement and maintain all policies, practices and actions that are recommended by the Asset Manager and ADFA for operation of the Development to ensure the long-term viability of the Development, including but not limited to establishment, maintenance and amount of operating and replacement reserves, selection and utilization of property management personnel and companies, refinancing of debt, and restructuring of debt and equity.

C. Owner **shall** reimburse ADFA for all fees, costs and expenses charged by the Asset Manager for its asset management services provided to the Development.

D. Owner **shall** establish a Replacement Reserves account with an initial balance of two hundred fifty dollars (\$250.00) per unit in the Development, including all restricted units, all market rate units and all manager/employee units. Owner must make annual deposits throughout the affordability period to the Replacement Reserves account in the amount of \$250.00 per unit in the Development. All withdrawals from this account or payments made from this account must be pre-approved by the Asset Manager and ADFA. The balance of the Replacement Reserve account may not at any time be less than the total of two (2) years deposits calculated as set forth above. A copy of the bank account statement evidencing the monthly balance of the Replacement Reserves account must be provided to the Asset Manager on a monthly basis.

E. (i) Owner **shall** establish an Operating Reserves account with an initial balance of not less than the sum of six (6) months of:

1. Annual operating expenses as represented in Owner's pro forma financial statement;
2. Annual debt service payments; and
3. Annual replacement reserve deposits.

(ii) Owner must maintain such an account throughout the 15-year compliance period. All withdrawals from this account or payments made from this account must be pre-approved by the Asset Manager and ADFA. A copy of the bank account statement evidencing the monthly balance of the Operating Reserves account must be provided to the Asset Manager on a monthly basis.

(iii) The Operating Reserves account must be replenished to an amount equal to or greater than the amount set forth above within six (6) months of any withdrawal. Owner must provide the Asset Manager with evidence of such replenishment by the earlier of: (a) ten business days after the date of the last deposit which increased the Operating Reserves account to an amount equal to or greater than the amount set forth above, or (b) the tenth business day of the seventh month after the date of the withdrawal. This requirement **shall** apply separately to each and every withdrawal from the Operating Reserves account that causes the Operating Reserves account balance to decrease below the amount set forth above or is made at a time that the Operating Reserves account balance is less than the amount set forth above.

F. Owner **shall** provide within ten (10) calendar days any and all information, records, documentation and reports requested by ADFA or the Asset Manager.

G. Owner **shall** maintain property hazard insurance for the Development in an amount sufficient to rebuild the Development in the same manner and quality as represented by Owner in its application for federal low-income housing tax credits and Section 1602 Exchange Funds.

(i) Owner **shall** cause ADFA to be named on the insurance policy as Mortgagee and additional loss payee. ADFA is in no manner responsible for payment of the insurance premiums, notifying Owner of premiums due, notifying Owner of any other correspondence received by ADFA in regard to the insurance policy, or any other action or fiduciary duty. Owner understands that ADFA is not Owner's escrow agent and that Owner and ADFA have no fiduciary relationship. It is exclusively the Owner's responsibility to ensure that the Development is sufficiently insured at all times. ADFA has the right to purchase property hazard insurance for the Development and recover all costs for such insurance and the expense of obtaining such coverage from Owner. However, ADFA has no duty to perform this service.

(ii) Owner **shall** maintain liability insurance for bodily injury and automobiles owned, leased, or operated by Owner. Owner **shall** maintain insurance coverage for flood damage if the Development is located in the 100-year flood plain (FEMA Flood Zone A or any sub-designation of Zone A).

(iii) Owner **shall** maintain workers compensation insurance in accordance with all applicable Arkansas law.

(iv) Owner **shall** deliver Certificates of Insurance on an annual basis to ADFA and the Asset Manager evidencing all coverage and coverage limits provided to Development.

V. RECAPTURE

A. When the applicable fraction of a building, under §42(h)(6)(B)(i), is greater than the building's Section 1602 Exchange Percentage, a recapture event **shall** occur any time within the Development's 15-year compliance period, as defined by Section 42 of the IRC, that the applicable fraction falls below the greater of: (a) the Section 1602 Exchange Percentage; or (b) the minimum set-aside elected for the building under Section 42(g)(1).

B. When the applicable fraction of a building is less than the building's Section 1602 Exchange Percentage, a recapture event **shall** occur any time within the Development's 15-year compliance period that the applicable fraction of the building under Section 42(c)(1)(B) falls below the greater of: (a) the applicable fraction specified for the building in the extended use agreement under Section 42(h)(6)(B)(i), or (b) the minimum set-aside elected for the building under Section 42(g)(1).

C. Owner's breach of any provision of this Agreement may constitute an event that ADFA may, in its discretion, deem a recapture event.

D. In the event that a recapture event occurs, ADFA **shall** give Owner notice and an opportunity to return to compliance within thirty (30) days. If Owner does not return the Development and/or Owner to compliance within thirty days, ADFA may require payment of the recapture amount for one year (1/15 of the total grant amount). If the Development and/or Owner thereafter remains out of compliance for an additional thirty days, Owner may be deemed to be in default of this Agreement and ADFA may pursue all remedies available under this Agreement, federal and state law.

E. ADFA **shall** have full recourse against Owner and the General Partner of Owner for the full amount of recapture. ADFA **shall** have recourse against each partner or member of the General Partner of Owner limited up to the amount set forth in the Guaranty executed by each such partner or member. ADFA's interest **shall** be protected by a Mortgage filed in the real property records of _____ County, Arkansas, a promissory note, and Guaranties executed by the General Partner of Owner and a proportionate share of each member's or partner's interest in the General Partner of Owner or other person or entity whom ADFA finds acceptable. The principal of the promissory note and the amount of the Guaranty or Guaranties **shall** decrease annually by 1/15 of the original Section 1602 Exchange Fund grant amount for each year of compliance with the Exchange Agreement, all Section 1602 Exchange Program requirements and all Section 42 requirements.

F. Any amount subject to recapture **shall** become a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of Owner. Owner and the Guarantors **shall** be liable to ADFA and the Treasury for any and all amounts arising under this Agreement that ADFA is required to repay to Treasury, including any and all penalties, as more fully set forth in Section XIII and Section XIV of this Agreement.

VI. HOUSING QUALITY STANDARDS

A. All affordable housing developed with Section 1602 Exchange Funds provided under this Agreement **shall**, upon completion: (1) meet all representations made by Owner in its application for receipt of tax credits and/or funding from ADFA, including Section 1602 Exchange Program Funds; (2) meet or exceed all applicable minimum housing code standards, as established by ADFA; (3) all federal and state accessibility requirements, (4) Fair Housing requirements; and (5) all applicable federal regulations, and all state and local housing, zoning, fire, and building codes, as amended, for the duration of the required affordability period.

B. Owner **shall** establish and maintain records for each income and rent restricted housing unit in the Development, to ensure adherence to all applicable minimum design standards, as established by ADFA, all applicable federal regulations, and all state and local housing, zoning, and building codes, as amended. Prior to processing any periodic draw requests under this Agreement, the Owner's compliance with all such standards will be verified by an inspection conducted by the construction monitor or an ADFA inspector.

C. (i) ADFA or a third party monitor (its agent) will perform construction monitoring during construction until the Development receives a certificate of occupancy from the local, applicable governmental unit. **If applicable, Owner must notify ADFA a minimum of 48 hours in advance to schedule construction inspections.** Owner must fully cooperate with ADFA or its agent to facilitate construction inspections, reviews, and reporting requirements. At a minimum, construction inspections will be performed at the following stages of construction:

Stage 1

Excavation
Footing and/or foundation reinforcement
bar and wire mesh
Termite treatment
Rough-in plumbing
Earth Work
Water proofing (vapor barrier)
Footing
Slab

Stage 3

Flooring systems
Painting
Doors
Cabinets
HVAC
Electrical top-out
Special construction (elevators, etc.)
Appliances

Stage 2

Plumbing
Electrical rough-in

Framing
Roof
Interior wall systems
Exterior wall systems
Ventilation
Insulation

Stage 4

Final Inspection

(ii) Construction inspection may be performed at any time, with out without notice to Owner.

(iii) ADFA and all agents of ADFA reserve the right to inspect at any time during normal business hours any and all construction or rehabilitation accomplished under this Agreement to assure adherence to applicable Uniform Physical Condition Standards, ADFA's minimum design standards, all applicable federal laws and regulations, and all state and local housing, zoning, building and fire codes, as amended.

(iv) Owner **shall** pay all fees, costs and expenses charged by the construction monitor and asset manager for their services provided on behalf of the Development.

D. ADFA and all agents of ADFA reserve the right to inspect at any time during normal business hours any and all rehabilitation accomplished under this Agreement to assure adherence to applicable Housing Quality Standards, minimum housing codes, as established by the local jurisdiction, ADFA's minimum design standards, all applicable federal regulations, and all state and local housing, zoning, building and fire codes, as amended.

E. Owner **shall** use only Arkansas licensed contractors and subcontractors, reputable workmen, material suppliers and agents acceptable to ADFA in the rehabilitation, marketing, and leasing of the housing units to be rehabilitated under this Agreement.

VII. NOTICES

Communication and details concerning this Agreement **shall** be directed to the following persons:

ADFA
Multi-Family Housing Manager
P.O. Box 8023
Little Rock, AR 72203
(501) 682-5900

[owner]
[address]
[phone]
[fax]
[email]

The contact persons listed above may be changed upon fifteen (15) days' written notice to the other party.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Owner **shall** provide all information requested by ADFA in a timely manner to enable ADFA to meet all reporting requirements imposed by HUD, any other United States government agency or entity, or the State of Arkansas.

B. Owner **shall** abide by all applicable federal, state, and local laws, regulations, codes, and ordinances in the performance of all activities required by this Agreement, and specifically agrees to adhere to all applicable requirements of 26 U.S.C. 42 and all accompanying legislation, regulations, Treasury guidance, and IRS guidance.

C. Owner **shall** provide all information requested by ADFA in a timely manner to enable ADFA to meet all reporting requirements imposed by the Treasury, other United States government agency or entity, or the State of Arkansas. Owner must provide a monthly report due to ADFA on the 1st day of the first month after the month in which this Agreement is executed. Owner must provide such monthly reports to ADFA through the month in which the Development is placed in service. At such time, the reporting frequency and content may be revised by ADFA. The monthly report **shall** include, but not limited to, the number of construction and non-construction jobs created in the past month, number of construction and non-construction jobs retained in the past month, the amount of Section 1602 Exchange Funds expended, and the completion status of the Development.

D. Owner **shall** cause an independent cost certification audit of this Development to be performed after completion of the Development. This audit **shall** be in accordance with generally accepted accounting principles and generally accepted auditing principles. An independent auditor acceptable to ADFA **shall** conduct the audit. The independent auditor **shall** provide ADFA with a copy of such audit upon its completion. Any deficiencies noted in the audit report **shall** be fully cleared by Owner within thirty (30) calendar days after receipt of the audit report by ADFA.

E. Owner **shall** make available to ADFA at any time during normal business hours all financial, compliance and rehabilitation records of activities pertaining to funding and the Development covered by this Agreement to allow ADFA to conduct monitoring, performance, and compliance reviews and evaluations. Notwithstanding any other provision in this Agreement, ADFA will monitor the performance of Owner against the activities described in this Agreement.

F. Owner will ensure that all records required under this Agreement are retained for a period of five (5) years after the applicable required period of affordability has expired. When requested, Owner **shall** furnish, and cause all its subcontractors to furnish, all reports and information required hereunder, and will permit access to its books, records, and accounts, by ADFA, the Treasury, IRS, the HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the statutes, rules, regulations, and provisions stated herein.

G. Owner **shall** not further encumber the Development except as provided in this Agreement, without the prior written approval of ADFA.

IX. DEBARMENT AND SUSPENSION

Owner certifies that the Owner and its principals:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from covered transactions by any federal department or agency;

B. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, making false statement(s) or receiving stolen property;

C. Are not presently indicted for or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated above, and;

D. Have not within a three (3) year period preceding this Agreement had one (1) or more public transactions (federal, state or local) terminated for cause or default.

X. REMEDIES ON DEFAULT

Owner agrees that in the event that ADFA determines that a breach of this Agreement has occurred, including but not limited to failing to complete the Development, failing to complete the Development by the times specified herein, failing to expend the exchange funds by the time specified herein, without an extension of time approved by ADFA in writing, failing to ensure that the Development meets all requirements of Section 42 and this Agreement, or failing to meet the necessary percentage of low-income housing units, ADFA may exercise any and all of its rights and remedies under this Agreement, state and federal law, and all applicable regulations, including the right to terminate this Agreement and require repayment of all Section 1602 Exchange Funds granted in this Agreement. More specifically:

A. If ADFA determines that Owner has materially failed to comply with any provision of this Agreement, or with any rules, statutes, regulations, or ordinances, ADFA will notify Owner in writing by certified mail, return receipt requested, of such non-compliance to the party designated to receive such Notices in Section VII of this Agreement. For purposes of this section, the term materially means "an important or essential term of the Agreement." "Material" necessarily includes but is not limited to any action or inaction by Owner that constitutes a recapture event pursuant to Treasury and/or HUD guidance.

B. ADFA will allow Owner the opportunity to comply with the requirement(s) at issue. Owner **shall** offer evidence of such compliance within thirty (30) days from receipt of the written notice. Any such offered evidence of compliance **shall** not constitute compliance with the terms and conditions of this Agreement unless ADFA expressly makes a finding in writing that the offered evidence demonstrates compliance with the Agreement requirement(s) in question.

C. If Owner fails to satisfactorily demonstrate to ADFA that it has fulfilled the requirement(s), ADFA **shall** provide Owner with Notice of Default. ADFA may take any "corrective or remedial actions," including but not limited to those actions listed herein, severally or in combination, or may terminate this Agreement and demand repayment of the full amount of Section 1602 Exchange Funds disbursed to Owner under this Agreement and all other remedies to which it is entitled under this Agreement, federal and state law, whether or not it has exercised in the Notice of Default its right to take any of the corrective or remedial actions set forth herein, which include, but are not limited to:

- a. Withholding further disbursements pending correction of the deficiency by Owner.
- b. Require additional information from Owner to verify the nature of a deficiency and adverse effects.
- c. Specific activities required by ADFA to correct the deficiency and to be accomplished by Owner in a specified time frame.
- d. Canceling or revising activities may affect the performance of this Agreement and create a deficiency in the original Agreement and may be grounds for making this contract void, and trigger remedies available to ADFA under this Agreement and/or Section 1602 Exchange Program regulations.
- e. Reprogramming any balance of Section 1602 Exchange Funds made available under this Agreement from deficient activities, or any activity funded under this Agreement, to other eligible activities.
- f. Suspension of Section 1602 Exchange fund disbursements for any activities funded under this Agreement and subsequent termination of this Agreement in its entirety.
- g. Termination of this Agreement in its entirety and requiring that the Owner repay to ADFA any and all Section 1602 Exchange Funds received by Owner under this Agreement.
- h. Removing Owner, principals of Owner, members of Owner's development team and/or other individuals and entities, at the discretion of ADFA, from future participation in programs administered by ADFA.

i. Requiring that Owner terminate the management company. Owner agrees to hold ADFA harmless for any damages or claim for damages caused or alleged to have been caused by this requirement. In the event that equity from the sale of tax credits is a source of funds for the Development that is equal to or greater than one-third (1/3) of the total Development costs and such credits are owned by an entity other than the Owner, any member of Owner's Development team, or any entity affiliated with Owner, the equity contributor must consent in writing to ADFA's election to exercise this right.

j. Requiring that Owner engage a management company selected by ADFA to provide management services for the Development. In the event that equity from the sale of tax credits is a source of funds for the Development that is equal to or greater than one-third (1/3) of the total Development costs and such credits are owned by an entity other than the Owner, any member of Owner's Development team, or any entity affiliated with Owner, the equity contributor must consent in writing to ADFA's election to exercise this right.

k. Taking any and all other actions that are available to ADFA under this Agreement, all other relevant contractual agreements, applicable regulations, federal law and state law.

D. ADFA is not required to take any corrective or remedial action before terminating this Agreement. The Notice of Default may constitute prior written notice to the Owner under Section XI, unless ADFA sets forth corrective or remedial actions in the Notice of Default that may be taken by Owner. A separate Notice of Termination will be issued by ADFA, in their sole discretion and at any time ADFA determines the breach(es) has (have) not been cured by corrective or remedial action. It is within ADFA's sole discretion whether to require corrective or remedial actions, or to terminate the Agreement without requiring, or providing Owner the opportunity to take, corrective or remedial actions.

E. ADFA is not required to take any corrective or remedial action before pursuing all legal and equitable rights to which it is entitled.

F. In the event Owner dissolves the organization, ceases to exist, or becomes unable for any reason to fulfill its obligations under this Agreement, ADFA will require Owner to fully repay to ADFA the remaining balance of any and all Section 1602 Exchange Funds disbursed to Owner pursuant to this Agreement unless ADFA has agreed otherwise, in writing.

G. Notwithstanding any other provision of this Agreement, should there be any fraud, misrepresentation, embezzlement, or any other criminal activity associated with this Development or Owner, ADFA may pursue all legal and equitable remedies available to it against the Owner and the Development.

H. Any decision regarding corrective or remedial actions, termination, legal or equitable remedies or actions to be taken regarding this Agreement or Development **shall** be at the sole option and discretion of ADFA. A decision by ADFA to pursue one course of action **shall** not constitute a waiver of any other course of action ADFA may pursue under this Section X, Remedies on Default.

I. In the event that legal action is necessary to enforce any provision of this Agreement, the prevailing party **shall** be entitled to recover its attorney's fees and costs.

XI. TERMINATION

ADFA may terminate this Agreement upon thirty (30) days prior written notice to the Owner contact person indicated in Section VII of this Agreement. A Notice of Default is sufficient notice to Owner that this Agreement will be terminated, unless corrective or remedial action is set forth therein. The notice of termination **shall** set forth the reasons for such termination, the effective date of termination, and in the case of partial termination, the portion of the award to be terminated. However, in the case of partial termination, if ADFA, in its sole discretion, determines that the remaining portion of the funding provided under this Agreement will not accomplish the purposes for which the award was made, the ADFA may terminate the award in its entirety.

XII. MISCELLANEOUS PROVISIONS

A. The officials who executed this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of ADFA and Owner, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.

B. This Agreement **shall** be executed in the original, and any number of executed copies. Any copy of this Agreement so executed **shall** be deemed an original and **shall** be deemed authentic for any other use.

C. The parties may amend or modify this Agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this Agreement, and are executed in writing by a duly authorized representative of both parties. Such amendment(s) or modification(s) **shall** not invalidate this Agreement, nor relieve or release the parties from their obligations under this Agreement.

D. The terms and conditions of this Agreement **shall** be binding upon the parties hereto, their respective successors and assignees.

E. Nothing contained in this Agreement is intended to, or **shall** be construed in any manner, as creating or establishing the relationship of employer and employee between the parties. Owner **shall** at all times remain an independent contractor with respect to the services to be performed under this Agreement. Further, nothing contained in this Agreement is intended to, or **shall** be construed in any manner, as creating or establishing the relationship of principal and agent between the parties.

F. Owner **shall** not assign or transfer any interest in this Agreement without the prior written approval of ADFA.

G. This Agreement **shall** be construed according to the laws of the State of Arkansas.

H. Any and all suits at law or equity arising out of this Agreement must be filed in the Circuit Court of Pulaski County, Arkansas. By execution of this Agreement, Owner consents to the personal jurisdiction of Arkansas for all matters arising from the application for Section 1602 Exchange Funds, award of Section 1602 Exchange Funds, this Agreement, construction of the Development and operations of the Development.

I. Should any part, term or provision of this Agreement, or portions thereof, be determined by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining portions or provisions **shall** not be affected thereby.

J. The use of the singular or plural is for the parties' convenience only and **shall** not be construed as limiting or expanding any authority, duty, or liability.

K. Owner hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise relating directly or indirectly to this Agreement, the associated Mortgage, Note and LURA and all other related documents, representations and agreements, for any acts or omissions of Owner, its officers, members, partners, employees, directors and agents.

L. Owner **shall** not engage in any business other than owning and operating the Development.

M. Owner **shall** not file or consent to a petition of bankruptcy, insolvency, liquidation or reorganization, or make assignment for the benefit of creditors without providing actual notice to ADFA and obtaining ADFA's written consent to any action prior to Owner taking or agreeing to such action.

N. Owner waives all right to request a qualified contract pursuant to Section 42(h)(6)(I) of the IRC.

O. Owner understands and agrees that Owner has exclusive responsibility for compliance with all applicable program requirements. Owner understands and agrees that ADFA is neither Owner's legal counsel nor tax advisor and that ADFA and Owner have no fiduciary relationship.

P. Owner understands and agrees that all information, documents, records and other such items may be considered public information and may be subject to public review. Owner **shall** not object to the release by ADFA of any submitted information, documents, records or other such items in the event that ADFA legal counsel determines that such disclosure is permissible under federal and state law.

Q. Owner has not relied upon any representations made by ADFA or its agents that are not expressed in this Agreement.

R. This Agreement **shall** not be considered merged upon the closing of the Mortgage and all terms and conditions set forth herein, whether or not set forth in the Mortgage, **shall** survive the closing of the Mortgage.

XIII. INDEMNITY

Owner agrees that it **shall** defend, indemnify and hold harmless ADFA, its officers, agents, directors and employees from and against any and all claims, liabilities, damages, losses, injuries, costs, expenses, suits and actions arising from this Agreement, including but not limited to:

A. Any and all claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of this Agreement.

B. Any claims or losses resulting to any person or firm injured or damaged by the erroneous, willful or negligent acts or omissions, including disregard of Federal, State, and local statutes or regulations, by Owner, its officers, employees or subcontractors in the performance of this Agreement.

C. Any and all claims or losses arising from the Development's award of tax credits, any return of tax credits, award of Section 1602 Exchange funding, construction and operation.

D. Any and all claims or losses arising from the award and distribution of Section 1602 Exchange Funds to Owner for which the Treasury seeks repayment, damages or other compensation from ADFA.

E. Owner agrees to pay all reasonable attorneys' fees and costs incurred by ADFA in defending any and all claims arising out of this Agreement brought against ADFA by any person, entity or governmental body.

No part of the above provision **shall** be construed to waive A.C.A. §21-9-301.

XIV. RECOURSE

It is expressly understood by the parties hereto that ADFA **shall** have full recourse against Owner for breach of this Agreement. It is further understood that each member or partner of the General Partner of Owner **shall** be directly liable to ADFA for the amount of Exchange funds awarded herein that is equal to the member's or partner's percentage of ownership interest in the General Partner. A copy of each Guaranty **shall** be included hereto and incorporated herein by reference as if set forth word for word.

XV. TIME OF PERFORMANCE

Owner **shall** commence construction [rehabilitation] of the Development within one-hundred twenty (120) days of the date ADFA issues the Notice to Proceed. Owner **shall** complete the project, i.e., place all buildings of Development in service by December 31, 20__ (09, 10, 11). In the event that construction does not begin within said time period, or the project is not complete by said time, ADFA may, at its sole discretion, terminate this Agreement. Any extension of time permitted by ADFA **shall** not be considered a waiver of this time of performance requirement and **shall** not affect ADFA's right to terminate this Agreement in any way except as set forth in writing and signed by the President of ADFA.

Owner **shall** complete construction and place the Development in service by the earlier of the time required under Section 42 of the IRC or December 31, 2011. Owner agrees to fully cooperate with all construction monitoring by a third-party or ADFA personnel. In the event that Owner fails to comply with the construction schedule, and ADFA determines that any such construction delay jeopardizes completion of the Development by the time specified herein, ADFA **shall** have the right to terminate this Agreement and recover all Section 1602 Exchange Funds disbursed to Owner.

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XVI. TERM OF AGREEMENT

This Agreement **shall** be in full force and effect from the date first written above and **shall** remain in force for the full period of affordability applicable to the Development assisted with Section 1602 Exchange Funds under this Agreement.

ADFA:

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: _____
Mac Dodson, President

Date: _____

Federal Identification Number: 71-0503641

OWNER:

By: _____
Its: _____

By: _____
Name: _____
Title: _____

Date: _____

Federal Identification Number: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

DEVELOPMENT'S FINAL SOURCES AND USES STATEMENT

EXHIBIT C

CONSTRUCTION TIMELINE